

MEETING RECORD

NAME OF GROUP: PLANNING COMMISSION

DATE, TIME AND PLACE OF MEETING: Wednesday, September 20, 2000, 1:00 p.m., City Council Chambers, First Floor, County-City Building, 555 S. 10th Street, Lincoln, Nebraska

MEMBERS IN ATTENDANCE: Russ Bayer, Jon Carlson, Steve Duvall, Linda Hunter, Gerry Krieser, Patte Newman, Tommy Taylor, Greg Schwinn and Cecil Steward; Kathleen Sellman, John Bradley, Mike DeKalb, Rick Houck, Jennifer Dam, Jean Walker and Teresa McKinstry of the Planning Department; media and other interested citizens.

STATED PURPOSE OF MEETING: Regular Planning Commission Meeting

Chair, Russ Bayer, called the meeting to order. and requested a motion approving the minutes of the meeting held September 6, 2000. Motion to approve made by Duvall, seconded by Carlson and carried 8-0: Bayer, Carlson, Duvall, Hunter, Krieser, Newman, Taylor and Schwinn voting 'yes'; Steward abstaining.

Chair Bayer announced that Change of Zone No. 3274 and Special Permit No. 1867 have been withdrawn and are no longer on today's agenda.

CONSENT AGENDA **PUBLIC HEARING & ADMINISTRATIVE ACTION** **BEFORE PLANNING COMMISSION:**

Members present: Bayer, Carlson, Duvall, Hunter, Krieser, Newman, Taylor, Schwinn and Steward.

The Consent Agenda consisted of the following items: **CHANGE OF ZONE NO. 3281; CHANGE OF ZONE NO. 3283; SPECIAL PERMIT NO. 1851A; COUNTY SPECIAL PERMIT NO. 184; SPECIAL PERMIT NO. 1826; SPECIAL PERMIT NO. 1872; SPECIAL PERMIT NO. 1874; FINAL PLAT NO. 99040, EAGLE CREST ADDITION; FINAL PLAT NO. 00010, VINTAGE HEIGHTS 8TH ADDITION; FINAL PLAT NO. 00021, RIDGE POINTE 1ST ADDITION; FINAL PLAT NO. 00025, PRAIRIE FALLS ESTATES ADDITION; STREET & ALLEY VACATION NO. 00015; STREET & ALLEY VACATION NO. 00016; AND MISCELLANEOUS NO. 00007, AMENDMENT TO THE NORTH 27TH STREET REDEVELOPMENT PLAN.**

Item No. 1.2a, Change of Zone No. 3283; Item No. 1.2b, Special Permit No. 1851A; Item No. 1.3, County Special Permit No. 184; Item No. 1.4, Special Permit No. 1826; Item No. 1.5, Special Permit No. 1872; Item No. 1.6, Special Permit No. 1874 and Item No. 1.13, Miscellaneous No. 00007, were removed from the Consent Agenda and scheduled for separate public hearing.

Steward moved to approve the remaining Consent Agenda, seconded by Schwinn and carried 9-0: Bayer, Carlson, Duvall, Hunter, Krieser, Newman, Taylor, Schwinn and Steward voting 'yes'.

Note: This is final action on Eagle Crest Addition Final Plat No. 99040, Vintage Heights 8th Addition Final Plat No. 00010, Ridge Pointe 1st Addition Final Plat No. 00021 and Prairie Falls Estates Addition Final Plat No. 00025, unless appealed to the City Council by filing a letter of appeal with the City Clerk within 14 days of the action by the Planning Commission.

SPECIAL PERMIT NO. 1826
FOR A DOMICILIARY CARE FACILITY
ON PROPERTY LOCATED AT
4444 SOUTH 56TH STREET.

PUBLIC HEARING BEFORE PLANNING COMMISSION:

September 20, 2000

Members present: Duvall, Hunter, Taylor, Schwinn, Steward, Newman, Krieser, Carlson and Bayer.

Planning staff recommendation: Conditional approval.

This item was removed from the Consent Agenda and had separate public hearing due to a request from the Colonial Hills Neighborhood Association for deferral.

Ray Hill of Planning staff submitted a request from Colonial Hills Neighborhood Association for deferral to provide an opportunity for the association to review the plan.

Proponents

1. Mike Rierden appeared on behalf of the applicant. The applicant would like to proceed forward but to accommodate the neighborhood association, they would agree to a two week deferral. Rierden advised that the applicant did meet with all surrounding property owners and what they thought were the affected neighborhood associations. They will meet with Colonial Hills in the next two weeks.

Carlson moved to continue public hearing on October 4, 2000, seconded by Hunter and carried 9-0: Duvall, Hunter, Taylor, Schwinn, Steward, Newman, Krieser, Carlson and Bayer voting 'yes'.

Support

1. Jodi Schulz, 4524 So. 57th, has met with the architect and the owners of Haven Manor and she does not object to the proposal, believing that it will blend in with the surrounding homes; however, she does have other concerns. The plan shows Austrian Pines, which are known to carry disease. She knows this will not affect the neighbors' property, but it might look bad. The neighbors are also concerned whether the wrought iron fence dividing the property lines will be tall enough to keep people from crossing through. She believes a 6' wooden fence might be better. She also requested that a fence be built around the construction site. Most of the residents are in agreement with what is going to be built.

2. Michelle Mennenga, 4440 So. 57th, has reviewed the staff report and she agrees that they need more trees and they should use scotch pine or spruce. The slope of the land is an issue. The maximum height of the building will be 25' and the architect has told her it could be reduced to 20' by changing the slope of the roof and she believes that would be more in character with the surrounding neighbors. Safety is an issue and they would prefer a 6' wood or plastic fence. The orange fences used during construction should also be at least 6' for safety reasons.

Bayer pointed out that the staff report does require the applicant to resubmit showing another tree other than Austrian Pine.

3. Ed Patterson, Malone Neighborhood, 2108 Q, testified that the Austrian Pine is a beautiful tree. Before passing judgment on this tree having a disease, he suggested that the neighbors look at the Austrian Pine on the southwest corner of the Art Dept. building on UNL city campus and judge for themselves whether that would be an asset to their neighborhood.

Response by the Applicant

Rierden agreed to meet with the individuals that spoke and will attempt to resolve their issues in the next two weeks.

Carlson requested to see a rendering of the proposed ground sign, also.

SPECIAL PERMIT NO. 1872
FOR A DWELLING FOR A DOMESTIC EMPLOYEE
ON PROPERTY GENERALLY LOCATED AT
SOUTH 98TH STREET AND YANKEE HILL ROAD.
PUBLIC HEARING BEFORE PLANNING COMMISSION:

September 20, 2000

Members present: Duvall, Hunter, Taylor, Schwinn, Steward, Newman, Krieser, Carlson and Bayer.

Planning staff recommendation: Conditional approval.

This application was removed from the Consent Agenda due to letters received in opposition and a request from the applicant for a continuance.

Mike DeKalb of Planning staff submitted a letter from the Treasurer for SID #5, dated 11/1996, indicating that no permits for commercial or industrial buildings be issued. They were reaching a point where they would have to add an additional cell on their disposal system.

DeKalb also submitted a letter in opposition with concerns about covenants which restrict the property to one dwelling unit per acreage; rural water and rural sewer districts is a concern; the SID is at maximum capacity; and there is concern about the precedent this sets.

DeKalb also submitted a letter from Creative Design Homes, Inc., on behalf of the applicant, requesting a four week deferral to meet with the neighbors and address their concerns.

Steward moved to defer with continued public hearing and administrative action scheduled for October 18, 2000, seconded by Hunter and carried 9-0: Duvall, Hunter, Taylor, Schwinn, Steward, Newman, Krieser, Carlson and Bayer voting 'yes'.

MISCELLANEOUS NO. 00007
AN AMENDMENT TO THE NORTH 27TH STREET
REDEVELOPMENT PLAN TO ADD PROJECT
ELEMENTS FOR AN AREA ON THE WEST SIDE OF
27TH STREET BETWEEN X AND Y STREETS.
PUBLIC HEARING BEFORE PLANNING COMMISSION:

September 20, 2000

Members present: Duvall, Hunter, Taylor, Schwinn, Steward, Newman, Krieser, Carlson and Bayer.

Planning staff recommendation: A finding of conformance with the Comprehensive Plan.

This application was removed from the Consent Agenda and had separate public hearing.

Proponents

1. Wynn Hjermsstad of Urban Development, explained that this amendment proposes to expand a project already in the Redevelopment Plan to the north to include two additional properties.

2. Ed Patterson, President of Malone Neighborhood Association, 2108 Q Street, testified in support. He reported that the Malone Neighborhood supports this proposal and he knows of no one in the Malone Neighborhood that would be opposed. The Antelope Valley development proposal adopted by the neighborhood association in 1997 recommended assembly of all property along 27th from X to Y west to, but not including, the neighborhood center. Please note, however, that their plan describes a facility with mostly glass frontage facing the bike path and the possibility of a delicatessen and food court. Commercial parking would not intervene between the deli patio and landscaping of the bike path. Commercial parking would be to the north off of Y and/or underneath the structures. The Malone Neighborhood's endorsement of this application is subject to the following: 1) there should be no use of the police power of the state to take property from one private individual and give it to another; and 2) property owners selling their land for this assembly by the constitution should not be pressured into bearing a disproportionate share of the burden of this project among taxpayers in Lincoln.

Steward advised Patterson that the Planning Commission's materials do not include any information to allow them to judge the specific design detail which Patterson refers to. Patterson believes that the Urban Development Department will comply. This is not intended to be a litmus test or a make or break comment. This is something the neighborhood would like to support if they can find a way to do so. There was a time before this additional assembly was on the drawing board when there was a sliver of property associated with the broom factory, and in order to get the necessary parking for

his commercial development, the property owner of the broom factory was going to have to have a densely packed row of commercial parking all the way along the park. It may turn out that way yet, but they are hopeful that something can be done with this development that will complement the linear park and the bike path.

2. Mike Morosin, past president of Malone Neighborhood Association, testified in support. However, they need to sit down once again and define what is actually going to be done. This would help the neighborhood understand what is going on.

There was no testimony in opposition.

Steward assumes in the steps that are being taken, this one being first but not specific to design, that the design action will incorporate the counsel and involvement of the neighbors. Hjermstad indicated that the neighbors would absolutely be involved at the time that they get closer to the design stage.

Public hearing was closed.

ADMINISTRATIVE ACTION BY PLANNING COMMISSION: September 20, 2000

Schwinn moved to find the proposed amendment to be in conformance with the Comprehensive Plan, seconded by Newman and carried 9-0: Duvall, Hunter, Taylor, Schwinn, Steward, Newman, Krieser, Carlson and Bayer voting 'yes'.

COUNTY SPECIAL PERMIT NO. 184
FOR AN EARLY CHILDHOOD CARE FACILITY/PRIVATE SCHOOL
ON PROPERTY GENERALLY LOCATED AT
HIGHWAY 34 AND N.W. 112TH STREET.

PUBLIC HEARING BEFORE PLANNING COMMISSION: September 20, 2000

Members present: Duvall, Hunter, Taylor, Schwinn, Steward, Newman, Krieser, Carlson and Bayer.

Planning staff recommendation: Conditional approval.

This application was removed from the Consent Agenda and had separate public hearing due to letters received in opposition.

Proponents

1. **Kathleen Itzen**, the applicant, presented the application. This 5.34 acres is agricultural. Her intent is to have a child care for under school age children, using the present house as a main building. The facility would initially allow 20 children. She would like to build another building to bring it up to an additional 35 children. During the summer she would like to provide child care for school age children (a day camp), from the ages of 5 to 10 or 11. The reason she has chosen this location is that it is a very gorgeous wooden green area. As you walk around the property, the west end is already fenced with chain link fence, which would lend itself to the preschool facility. The east part of the property is wooded with a large grassy area that would provide a playing field. There is an above ground swimming pool behind the house that would be used. This is also three miles from Pawnee Lake, providing field trip opportunities.

Itzen assured that she would comply with all code requirements for a day care facility, i.e. Health Dept., fire codes, building codes, etc.

Schwinn inquired whether the applicant is currently a licensed day care provider. Itzen stated that she is not; however, she taught school for 14 years in Seward. She received her Ph.D. in December. She is now unemployed and substitute teaches for Seward and Lincoln.

Itzen explained that she does not own the subject property, but she has permission from the current owners of the property for this facility. She anticipates purchasing the property if she is successful with the day care facility. She would plan to live there in the next five years if she is able to purchase the property.

Carlson understood from Itzen's testimony that she anticipates providing care for children from the city. Itzen explained that she anticipates that people from Seward (her home community), the Malcolm area, and Lincoln will use the facility. Her thought is that Lincoln people might be willing to make the drive out there. She has also thought about having a drop-off point somewhere in the Belmont area to bus the children to the facility.

Hunter noted that there are no records for discussion of the septic system or sewer system or water supply. She wonders whether the potential of 55 children would have an impact. This issue has not been addressed in the staff report. Itzen's plan would be to include whatever needs to be done in her purchase of the property. Presently, there is a septic system that has been adequate for the present owner. She is sure it would require a new system. She assured that she will investigate this issue.

Steward asked whether the applicant has considered having the water tested for quality and quantity as this area has had a history of uneven water supply. Itzen indicated that this would be done immediately and the costs would be built into her loan to purchase the

property. The driveway will come in from Hwy 34 and go out 112th. She will have additional costs for such improvements.

Bayer noted that the Health Department recommends deferral until the water supply and sewage treatment is addressed. Itzen explained that she cannot begin to apply for a loan in order to address these issues until she knows whether or not the facility is going to be approved.

Opposition

1. Mary Buckley testified in opposition. She and her husband have lived at 7300 N.W. 112th Street for 15 years. This is adjacent to the subject property on the south side. They are concerned about water quantity for this amount of children and whether the increase in usage would impact the neighbors' water supply. The property has experienced water problems in the past, as the owners have borrowed water from the neighbors because of salty water. Sewer is also an issue. The ability of a 5-acre plot to absorb the amount of sewage from a day care facility is a concern. Traffic is also a concern. Hwy 34 is a very busy highway with much commuter traffic between Seward and Lincoln. With the expansion of Kawasaki and the increasing number of acreages, this traffic can only be expected to increase. N.W. 112th doesn't just lead to Pawnee Lake. It is a paved road that connects Pawnee Lake and Branched Oak Lane. It is a major conduit between these two recreational areas and experiences heavy recreational vehicle traffic. East of Pawnee Lake it connects to N.W. 184th Street and connects to West "O" at Emerald. N.W. 112th is increasingly becoming a commuter route between Lincoln and the Seward/northwest Lancaster County area. This proposal will result in an increase in the stopping and turning of traffic at N.W. 112th and Hwy 34.

In addition, Buckley reported that the general condition of the property is not in her opinion what the state would consider acceptable for a facility. The plan does not show the outbuildings or their condition. They are generally dilapidated and probably not in compliance with building codes. The woods are an overgrown and unkept ravine. It has been used as a dumping ground of old appliances, sheet metal, wire, gutters, down spouts, etc. A concrete culvert runs underneath Hwy 34 from the north and into the creek bed at the bottom of this ravine. The culvert is unprotected and even this summer there is a deep pool of water. It fills with rushing water in heavy rains. The camping area is in the midst, adjacent to Hwy 34 and unfenced. The camping area is not visible from the house.

Buckley advised that the neighbors are concerned whether Itzen will actually be able to obtain a license and be willing and able to make the investment necessary to follow through. If this permit is granted it would allow for a facility much different than the one proposed by her by a future owner with no further action. The neighbors are concerned with the vagueness of the proposal. Given the general condition of the house and the

property, the notion of turning it into such a facility strikes them as unrealistic.

Buckley commented further that the neighbors in this area thought they could maintain a certain lifestyle and quality of life surrounded by single family acreages and agricultural. This proposal leans more toward commercial use than the agricultural use for which it is zoned.

2. Lynette Nelson, 11402 W. Fletcher Avenue, testified in opposition. Both of her children have been in a licensed home day care. This property is close to a busy highway and blacktop intersection. The traffic will inevitably cause accidents. Access to the highway is a potential hazard. Many wells in the area have difficulty. A well for a day care facility will further jeopardize their water supply. They do not have a rural water system in the area. How can a single family septic system accommodate up to 100 children in the summer? The property was built in 1900, with one bathroom; no central air; no basement; a 400 sq. ft. barn built in 1900; and an above ground swimming pool. Does a home of 100 years contain asbestos, lead paint, termites? When was the electrical system updated? What is the future life expectancy of this home as a day care facility? What escape routes would there be from the upstairs? What will be used as a storm shelter? Will she have a generator on site for power outages? Is this house with no basement adequate for 20 children during the winter months? Shigella is very contagious in a swimming pool. These property owners rely on the Malcolm Volunteer Fire Dept. An ambulance cannot provide 3-minute response time. She wonders what parent would want to send their children out of town to a day care. Buses are meant for school age children. How many 3-4 year-olds play basketball? Will this permit allow her to provide care for troubled kids, teenagers, children expelled from school, etc.? The neighbors are concerned about the special permit remaining with the land. This property could be a target for a group home for teenagers, etc. Many of the neighbors were notified that this would accommodate a day care and we all assumed it was a stay-at-home mom taking care of a few children.

Approximately 15 people stood in the audience in opposition. There are too many dangerous risks for the children and it does not conform to the rural area.

Staff questions

Carlson asked staff to speak to the concern for the “private school”. Mike DeKalb of Planning staff advised that the county regulations do not break out a specific definition like the city relative to “early child care facility”, so in the County it comes under a package definition of private school, so this application would allow a private school. The County does have a designation for group home with spacing requirements and that would have to be covered separately. State licensing constitutes the group home. Different rules apply to a group home. A group home would not be allowed by this special permit. A group home is a conditional use in the county with a spacing requirement. The special

permit does not specify age range as written, but it could be added.

With regard to the inquiry about typical size and whether there are any other day care facilities in the county, DeKalb received information from Jane Story at the Health Department which carries the license record of all centers defined by the state caring for over 13 children. There are three in the county--two in the Raymond area for 40 children, and another south of Lincoln on Hwy 77 with 59 children. In the city of Lincoln, there are 127 facilities that range in size from 15 to 176 children. They run the gambit from small home operations to commercial operations.

Hunter notes that the staff report shows that this special permit is in conformance with the Comprehensive Plan; however, it is AG zoning. How does this coincide with a day care center? DeKalb explained that the land use designation includes agricultural and a lot of other related uses. AG zoning allows public schools by right and private schools by special permit. Day care fits the private school definition in the County Zoning Resolution.

Response by the Applicant

Itzen stated that she feels negligent that she did not check the water situation out more adequately. She assured the Commission that she takes the concerns of the community in the way that they are meant. She understands the desire to keep the community as a rural community. She does see this as a commercial entity in that people will be paying for the day care and that is the money that would make this possible. She is pursuing this because she believes that children need to be in the country. The Health Dept. codes regulate this use as far as the amount of play area, etc. She is a mother and a grandmother. Her children grew up on a farm. She is attempting to provide something for children. She would address the water and sewer concerns. The traffic is a concern to her as well. The neighbors are fortunate to be in the country. People would come from Lincoln to the country to provide their children with a better learning environment. Children need space, trees, grass and fresh air. She believes there is a need for this facility. People are constantly looking for child care. This is a good location because it is accessible to a lot of people.

Steward empathizes with the attempt to provide community services. He asked the applicant whether she would consider deferral. Itzen indicated that she would. Steward explained that if Itzen were a commercial developer, the Commission would have expected that the developer contact the most immediate neighbors and would have done everything possible to keep the opposition from happening. It seems that there is more detailed

financial/business planning that needs to be done. He does not believe it is good to kill a good idea until proven not to be a good idea. Itzen indicated that she was surprised with the opposition. She has had five calls from neighbors who were curious and once she explained, they seemed real positive. She understands that there is more to be done.

Hunter offered some guidance and suggested that the applicant do some significant homework when it comes to costs for engineered septic systems, etc., because it can be rather expensive. Itzen stated that she would probably be seeking nonprofit corporate status.

Bayer is concerned about how much needs to be done and how much time might be needed. Bayer thinks there are Health Dept. issues that need to be addressed.

Steward moved to place this application on pending, seconded by Newman.

With regard to pending, Rick Peo of the City Law Department advised that it would be the applicant's responsibility to bring it forward from pending when she is ready to proceed. Mike DeKalb believes the issues are addressed in the staff report as conditions prior to building permit. If this application were acted upon today, it would move on to the County Board for another public hearing. It could be held at County Board at their discretion for further information. The Planning Commission could also defer for a period of time.

Hunter stated that she will vote against placing this on pending because she believes that the decision the Commission is supposed to make is on the use of the property—not about whether the buildings or sewer are adequate—it's whether this use is correct for this property.

Carlson would support setting a time line if this is placed on pending so that it does come back forward.

Bayer is not comfortable with the application and he is not sure pending is going to alleviate that. Duvall agreed and thinks the application is incomplete.

Motion to place on pending failed 3-6: Schwinn, Steward and Newman voting 'yes'; Duvall, Hunter, Taylor, Krieser, Carlson and Bayer voting 'no'.

Public hearing was closed.

ADMINISTRATIVE ACTION BY PLANNING COMMISSION: September 20, 2000

Hunter moved to deny, seconded by Newman.

Hunter commented that we have an agricultural development area, in the middle of which

we are instituting a commercial operation and she believes this is inappropriate.

Carlson understands why private school would be a permitted special use in the county. But there seems to be some ambiguity here in the definition. He is willing to vote for deferral to clear this up. If he has to vote yes or no, based on what we have today, it is probably no.

Newman does not believe a commercial use in an agricultural area is appropriate.

Steward agreed that the property is zoned agricultural, but let's be honest about it. We are dealing with an acreage community and these communities deserve similar services. We vote on one hand to not approve acreages because there are no services available or we vote on the other hand to change agricultural uses because we have the need or the right to change it into rural residential. If it's just a matter of land use, the only reason we are dealing with private school is because the county doesn't have provision for day care specifically. We need to be careful about the precedent that we are setting here.

Schwinn agreed that this is an agricultural area, but there are 31 separate lots, averaging 20 acres, which pretty much makes it a development for acreages. He finds it hard to believe that everyone is so upset about a day care center. The specific general conditions only allow 55 students. It operates from 6 a.m. to 6 p.m. with no overnight stay. He thinks there is too much protest about this whole thing.

Taylor agrees with Schwinn because he likes the concept but he thinks we need to consider the neighbors.

Hunter noted that in the Comprehensive Plan, there are areas designated for commercial and service type uses. We have all of these acreages around this proposal that are home sites and there is commercial development within reach of those areas. There are locations where this use could be put that are more traffic oriented, etc.

Rick Peo cautioned that this is a land use issue. We are not dealing with commercial. Private schools are a permitted special use in this district. The decision is whether it is appropriate to have a private school at this location. It is permissible under the law. Does it fit in or doesn't it?

Motion to deny carried 7-2: Duvall, Hunter, Taylor, Newman, Krieser, Carlson and Bayer voting 'yes'; Steward and Schwinn voting 'no'.

SPECIAL PERMIT NO. 1874
FOR A PERSONAL WIRELESS FACILITY
ON AN EXISTING TOWER AT
615 W. PROSPECTOR COURT.

PUBLIC HEARING BEFORE PLANNING COMMISSION:

September 20, 2000

Members present: Duvall, Hunter, Taylor, Schwinn, Steward, Newman, Krieser, Carlson and Bayer.

Planning staff recommendation: Conditional approval.

This application was removed from the Consent Agenda and had separate public hearing.

Proponents

1. **Jill Bazzell, of Qwest Wireless**, the applicant, advised that this application is to increase the height of the existing wireless communication tower to 128' to allow collocation as the third provider. They did meet with the neighborhood association. The applicant agrees with the conditions of approval.

Opposition

1. **Elizabeth Christiansen**, 2833 S.W. 6th, the property south of the existing tower, testified in opposition. It is her understanding that when the original tower was erected there was no fall zone ordinance. She believes her property lies within the fall zone and she requested that the fall zone not be waived. She also does not want the tower height increased and she suggested that the applicant be required to look for other sites. The staff was unaware that there was a residence in the fall zone.

2. **Scott Bailey**, 2925 S.W. 6th, testified in opposition. He has reviewed the application. There are no pictures of the back of the tower which actually shows the tower in relation to the residence. They keep adding things to it. The second tripod was added last week. He requested that the fall zone not be waived. The city made that ordinance for a reason and it should not be waived. There are two other towers within six blocks of this location which he does not believe were considered for this collocation.

3. **Christy Bailey**, 2925 S.W. 6th, testified in opposition. She is opposed to the waiver of the fall zone.

4. **Robin Robinson**, 2940 S.W. 6th, testified in opposition. She is opposed to the waiver of the fall zone because the ordinance was written to protect the surrounding properties. It appears to be waived more often than it is enforced. There are other towers in the area

that would meet the 128' height requirement. She does not believe adding 28' is appropriate. She is questioning the actual height. She is also questioning why this tower was recommended when the staff was not aware there was a house within the fall zone area. Qwest was not informed that there was a neighborhood association that could possibly be concerned about this. This should have been researched more thoroughly and the other towers should have been taken into consideration.

Jennifer Dam of Planning staff clarified that the existing house is not within the fall zone (which is half the height of the tower around the base of the tower). The existing tower was approved at 113' in height by Special Permit No. 1518 in 1994. There was not a fall zone requirement at that point in time. In the spring, an administrative permit was approved to collocate on this tower. The new wireless ordinance encourages collocation and it can be approved administratively. However, this particular application could not be done administratively because of the additional height. They are requesting an additional 15' above the existing tower. The fall zone is a radius of 64' from the base of the tower. The tower is about 10' in off the north property line and at least 120' from the house, if not 126', which is well outside the fall zone. The existing buildings in the commercial zoning are about 40' away and thus the request for waiver of the fall zone.

Dam explained that the reason that the fall zone is half the height is that representatives from the communications industry provided evidence that these towers are designed to break in half and topple onto themselves if they fall. Therefore, half the height was considered to be reasonable. There was discussion during the negotiations on the ordinance about whether a fall zone should be required at all, but it was left in for the more densely populated areas.

Steward asked whether the Commission has any responsibility from that ordinance to treat grandfathered towers any differently than new towers. Dam explained that the existing tower is considered to be grandfathered in terms of the fall zone, but adding the height spurred the need for the waiver. Steward assumes that the act of adding height has structural characteristics that perhaps negate the original concept of one-half the height. Dam responded, stating that the tower will have to meet the requirements of the electronic industry associations. It is like a uniform building code for tower structures and there is a structural review that takes place and whatever is put on top has to meet those standards.

Dam clarified that if the tower falls, it would break in half and fall in on itself instead of toppling over.

Response by the Applicant

Corby Dill of Qwest Wireless physically measured the distance from the residence. The radius shows the house being between 100-150' from the tower. He measured from the compound to the fence on the lot line of the house and it was about 115' from the fence, not from the pole. In actuality it is about 126' . Even if the pole did topple, it would have to have great luck to hit the corner of that house. They have considered numerous other sites in the area and this site was the best site meeting their requirements.

Bayer thanked Qwest for providing the map showing their locations.

Public hearing was closed.

ADMINISTRATIVE ACTION BY PLANNING COMMISSION: September 20, 2000

Taylor moved approval, with conditions, seconded by Duvall and carried 9-0: Duvall, Hunter, Taylor, Schwinn, Steward, Newman, Krieser, Carlson and Bayer voting 'yes'.

Note: This is final action, unless appealed to the City Council by filing a letter of appeal with the City Clerk within 14 days of the action by the Planning Commission.

CHANGE OF ZONE NO. 3283
A TEXT AMENDMENT TO TITLE 27
OF THE LINCOLN MUNICIPAL CODE
TO ADD ADULT CARE FACILITIES AS A SPECIAL
PERMITTED USE IN THE R-1 THROUGH R-5 RESIDENTIAL
ZONING DISTRICTS

and
SPECIAL PERMIT NO. 1851A
TO PROVIDE EARLY CHILDHOOD CARE AND
ADULT DAY CARE SERVICES AT
47TH & "J" STREETS.

PUBLIC HEARING BEFORE PLANNING COMMISSION: September 20, 2000

Members present: Duvall, Hunter, Taylor, Schwinn, Steward, Newman, Krieser, Carlson and Bayer.

Planning staff recommendation: Approval of the text amendment and conditional approval of the special permit.

These items were removed from the Consent Agenda and had separate public hearing at the request of Commissioner Hunter.

Proponents

1. **John Bergmeyer** appeared on behalf of the applicant. The text amendment will allow adult care facilities as special permitted uses in the R-1 through R-5 zoning districts. Currently, adult care facilities are not permitted as special uses within those districts. In July, Tabitha received approval of Special Permit No. 1851, which allows a facility to be constructed at 48th & J Streets for use solely as an early childhood care facility, serving a maximum of 62 children. From the beginning, Tabitha has wanted to use the facility as a joint facility providing both early childhood care for 42 children and adult care for a maximum of 20 adults. Tabitha has received a \$100,000 grant from the state to use in connection with the development of an adult care facility.

With respect specifically to the amendment to the special permit, there have been no changes whatsoever to the design of the facility which is already approved for the early childhood care facility. They are simply requesting that the special permit be amended to allow the facility to be used jointly as an early childhood care facility and as an adult care facility.

The east side of the property is zoned R-4, and the west side is zoned R-2. These are the only two zoning designations that affect this property; however, in an effort to work in conjunction with the staff and Law Department, they thought it was expedient and most efficient to go ahead and make the proposal apply to all of the R-1 through R-5 zoning districts.

Carlson inquired whether Tabitha anticipates locating other adult day care centers in the city. Bergmeyer was not aware of any at this time. Tabitha owns a variety of properties throughout the city. They do have a facility in the northern part of the city which will be serving as an adult care facility. It is an apartment complex that will be converted to adult care facilities. With respect to the Tabitha campus itself and this property, this would be the only adult care facility in that specific location. Carlson is trying to get a sense of potential for other sites around the city. Bergmeyer recalled that Tabitha had opposed the development of a project in Williamsburg for a retirement facility because Tabitha owns some property in that area that Tabitha has also considered using as a retirement facility as opposed to adult day care.

Steward asked the applicant to distinguish how this facility would differ from housing in related facilities for the physically handicapped and domiciliary care facilities. Bergmeyer stated that there is a separate designation for the adult care facilities. We are talking about adult day care and providing the same type of care services and facilities to adults who are

ambulatory or who are wheelchair mobile as would be provided to children in an early childhood care facility. All of the requirements relating to early childhood care facility would also apply to this. They did consider the other definition such as domiciliary care, but it just didn't fit based upon the analysis of the City Attorney and Planning Department.

But from a health care practice point of view, Steward wondered whether it would be fair to say that domiciliary care facilities are live-in, overnight residences, and the adult care facility would be day hours only? Bergmeyer agreed. They would not allow any activity from 6:00 p.m. to 6:00 a.m.

Ray Hill of Planning staff clarified that domiciliary care facility is accommodations and supervision for four or more persons, 60 years of age or more. Day care is not limited to elderly adults. The proposed operation is not a 24-hour operation, and not for residence and sleep-over. Steward asked whether the Commission is guided definitionally by "ambulatory" versus "wheelchair bound"? Hill stated no, that is left to the operator. The state does the licensing and most of the control falls within the state licensing.

Newman inquired as to the difference between a senior center and an adult day care. Will people be coming and going all day? Bergmeyer believes it would be a lot like the traffic involved with the early childhood care facility. The demand exists and is growing. Newman asked whether the applicant would foresee an adult recipient of the services driving himself to this facility. Bergmeyer stated no, absolutely not. It would be either the guardian or the adult children of the adult who would drop them off, etc.

Hill further clarified that the zoning ordinance defines adult care center as, "...a facility in which a program of structured and supervised social, manual, physical and intellectual services or activities are provided to adults who are either ambulatory or wheelchair mobile. Such services or activities shall be provided for a minimum of three hours per day, but shall not provide for overnight stays by participating adults."

2. Mike Morosin, past president of **Malone Neighborhood Association**, testified that he is somewhat in support but he did get a lot of phone calls. He does have a concern about separation of the adults from the children. At Day Watch they had to bar some of the children from the adults.

There was no testimony in opposition.

Carlson expressed concern that the timing of these two applications and their proximity of being heard at the same time on the agenda makes him wonder if we are changing the zoning text to facilitate a specific use in a specific location. He wants a sense of the demand for this type of service. He suspects that the demand is out there, but wants to make sure we are making the text change for its own reason. Hill believes that adult day

care should be given the same privilege as early childhood. The staff believes there is a shortage in the zoning ordinance for that. Presently, it is only permitted in commercial and industrial districts and the staff does not believe that is the only place it should be permitted. This applicant cannot request the special permit unless there is a change in the zoning ordinance.

Carlson wondered whether the text amendment concept had been percolating prior to this application. Hill believes there is a shortage in the zoning ordinance to allow for adult day care and that is the reason staff is supporting the application.

Newman inquired whether the text amendment was brought to the Mayor's Neighborhood Roundtable. She recalled that the Child Care Task Force met for a couple years and all this day care business was brought to the Roundtable twice and the number of children went down from 20 to 15 and there were major discussions. There are no neighborhood people here because they do not know about this. Hill acknowledged that this text amendment was not submitted to the Roundtable.

Rick Peo, City Attorney, pointed out that some of the problems with the zoning ordinance is that the state keeps creating new definitions of care type facilities and the city has a hard time fitting them into the zoning ordinance. Adult care was a recent innovation of the state and, at the time, the city did not have as much need to figure out where it would fit. This is in response to more demand from the state for facilities to be offered. Since Tabitha submitted the request for R-2 and R-4, the city staff determined that it should be expanded to include the R-1 through R-5 residential districts.

Carlson asked staff to confirm that there is no existing category that meets the needs of the proposal. Peo responded that the purpose of adult day care in 1992 was under a different concept than what society is looking at today as to locations. We were addressing specific problems at that time instead of overall. Carlson asked whether there is another category that would allow this use in R-1 to R-5. Rick advised that the staff did investigate and did not find anywhere else that it would fit.

Response by the Applicant

Bergmeyer advised that certain areas of the facility will be used only for the adults; certain areas will be used only for the children; and some are joint. Some portions of the facility will be used both by the adults and by the children; however, he did not know whether they would be jointly used at the same time. There will be nine employees. The services provided will be governed by the state statutes and Tabitha will comply with all laws, regulations and rules pertaining to the childhood care facility, the adult care facility and the two in conjunction.

Hunter inquired whether the day care center was originally developed for the purpose of

Tabitha employees. Bergmeyer indicated that partially, but not in total. It is anticipated that others will use the facility as well as employees of Tabitha.

Newman suggested that the term spot zoning comes to mind. She is really uncomfortable with a text amendment to do something for one entity. She is worried about sweeping all of R-1 through R-5 with the same use. Peo advised that spot zoning is where you zone the property for the benefit of one property only, i.e. agricultural to R-1. The text change is within the districts that already exist and expands the uses to those districts. This is not a spot zone to add more uses within the district. Everyone zoned R-1 would have that same privilege. There is no district to zone the property. At a minimum, you would make this change in R-2 and R-4 for this special permit. But, from staff's perspective, it was believed that the R-1, R-3 and R-5 are substantially the same.

Schwinn believes the reason that this property cannot be spot zoned is because we don't have a definition of adult day care to spot zone with. Peo clarified that we do not have adult day care as a permitted use in this district. Newman wanted to know how to go about amending the text to provide that it can only be approved if it does not unduly influence the character of the neighborhood. Peo advised that this is a special permitted use so the Commission already has that type of discretionary authority in its review. There are certain criteria for access, etc., but the Commission can still consider the surrounding neighborhood and make their own determination as to whether it fits into the neighborhood and does not cause a significant adverse effect.

Carlson believes that adult day care is currently allowed by right in B-1, B-3, I-1, I-2 and B-4. The larger Tabitha site is zoned R-4 and a portion B-1. They are there by special permit for a health care facility. If this facility were zoned B-1 they would have the adult day care center by right. Ray concurred. If zoned B-1 they would have the right for the adult day care with no special permit. Carlson believes that would be spot zoning. Peo advised that it would not be a spot zone to expand the boundaries of the B-1 district.

Carlson is concerned about the text change and what other avenues were considered by staff.

Public hearing was closed.

CHANGE OF ZONE NO. 3283

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

September 20, 2000

Hunter moved to deny, seconded by Carlson.

Hunter agrees that it would have been easier to expand the B-1 zoning on the Tabitha existing site. Bayer clarified that Tabitha is zoned R-4.

Hunter does not agree with adding this use to all of the residential districts. They could all submit to have adult centers, with or without early childhood. She believes it is in violation of the rights of a neighborhood. We need to have a continuing commitment to neighborhoods to protect their owner's investments. A residential neighborhood needs to remain a residential neighborhood. The concept of discriminating against one use or another has come up and she thinks it is more a situation of locating these types of uses in an area where zoning is applicable, and that is not in an R district.

Steward suggested that the Commission has the opportunity to make the list, shorten the list or extend the list for permitted special uses in any zone and that is the question at hand. He will vote against the motion on the basis that housing and related facilities for physically handicapped are already allowed as potential special uses in all of the R districts. Domiciliary care facilities are already allowed as potential special uses, and he believes this is a movement in our society for paying more attention to the full needs of care of elderly citizens. If they cannot be in a neighborhood, where would you like them to be? Every person in this room has been both the receiver of care and sooner or later will be a giver of care. We do not have enough variety in enough pleasant settings for the care of our senior citizens. He will do anything possible to expand that option. Frankly, he believes we carry the residential protection too far for eliminating some of the potential mixed use options which increase the quality of life of people in the residence.

Carlson agrees that the proposal has truly high and noble aims as far as the care of the elderly and increasing the opportunity. The difficulty he has is having a text change to facilitate a specific location. He believes the text amendment needs to have its own discussion as opposed to being related to this special permit. This amendment should come forward as a separate application. This particular use on this site is actually very good, but he is concerned about joining the two items without appropriate community discussion on the text change. He wants to vote on the merits of the text change itself.

Peo pointed out that there are substantially equivalent uses permitted in these districts, i.e. health care, domiciliary care, handicap. That is why staff considered more than just the one district for the special permit. The concepts overlap in these types of groups. He does not believe this intrudes into the district with a new and unusual type use. Health care facility even includes hospitals and they are allowed in the same districts.

Duvall agrees with Steward. It is a matter of adding another definition for the needs in our community.

The difference Newman sees from domiciliary is that there is the ability to start dropping off 30 adults at 6:00 a.m. on a collector street. That is an intensive use of a collector street in a neighborhood. Allowing up to 30 adults in any R district is not acceptable.

Schwinn believes that every zoning issue starts with two things being pared together. It has to be brought forward. Staff can't be expected to bring every new state definition forward. They wait until someone comes in and makes the application. Then that triggers the process. There are already 26 different special permitted uses in the R-1 zoning. This just adds another definition to what already goes on. You consider the traffic situation on each special permit on a case by case basis. Schwinn believes that this definition needs to be in the zoning ordinance, but he pointed out that each specific case will be brought forward by special permit and be reviewed on its own merit.

Carlson believes that this discussion is affirmation of the fact that this needs community input. He believes there is a need and it may be completely appropriate. But there are questions that deserve a larger discussion than this particular forum. He believes the Commission should receive more community input.

Bayer stated that he cannot see why this isn't a slam dunk. We put them there as kids, and bury them there, but we can't take care of them there. These adults have a right to be in any neighborhood they want to be. When I had to find a place for my mother, I couldn't.

Motion to deny failed 3-6: Hunter, Newman and Carlson voting 'yes'; Duvall, Taylor, Schwinn, Steward, Krieser and Bayer voting 'no'.

Steward moved approval, seconded by Duvall and carried 6-3: Duvall, Taylor, Schwinn, Steward, Krieser and Bayer voting 'yes'; Hunter, Newman and Carlson voting 'no'.

SPECIAL PERMIT NO. 1871A

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

September 20, 2000

Duvall moved approval, with conditions, seconded by Schwinn and carried 8-1: Duvall, Taylor, Schwinn, Steward, Newman, Krieser, Carlson and Bayer voting 'yes'; Hunter voting 'no'.

CHANGE OF ZONE NO. 3275
A TEXT AMENDMENT TO THE ZONING
ORDINANCE TO NOT LIMIT OFFICE USES
IN THE R-8 RESIDENTIAL DISTRICT

and

CHANGE OF ZONE NO. 3259
FROM R-8 RESIDENTIAL TO O-1 OFFICE

and

SPECIAL PERMIT NO. 1871
FOR AN OFFICE BUILDING
ON PROPERTY GENERALLY LOCATED AT
SOUTH 14TH STREET AND "G" STREET.

PUBLIC HEARING BEFORE PLANNING COMMISSION:

September 20, 2000

Members present: Duvall, Hunter, Taylor, Schwinn, Steward, Newman, Krieser, Carlson and Bayer.

Planning staff recommendation: Approval of the text amendment; denial of Change of Zone No. 3259, and conditional approval of Special Permit No. 1871.

Proponents

1. **Mark Fahleson** appeared on behalf of the Nebraska Association of County Officials (NACO). NACO has been around for 106 years providing a number of services to our county officials. Change of Zone No. 3259 from R-8 to O-1 was filed first; Change of Zone No. 3283, the text amendment, was requested next as an alternative; the special permit is not allowed without the text change. All three applications would affect the parcel owned by NACO at 725 South 14th Street, the northwest corner of 14th & G. Directly to the east is the Governor's mansion. Directly north the zoning changes to O-1, the Nebraska Nurses Association. This property is currently zoned R-8.

Fahleson explained that the lot in question is currently a duplex. They will not be changing the exterior of the facility. NACO has grown and their primary office is at 625 So. 14th. Their intent is to hold a few of the other office functions in the building at 725 So. 14th. There will be no changes in need for parking. The building was once used as office space. R-8 zoning does not permit an office use for a trade association. Therefore, they applied for the change of zone from R-8 to O-1, which allows this use. The buildings directly north (O-1 zoning) are using the property in the way that NACO would use this building. The Change of Zone to O-1 was referred to the Capitol Environs and during that meeting it was agreed that NACO, a trade association, is precisely the type of owner that they want around the State Capitol, but they were reluctant to change the zoning and suggested that the text change be submitted. It doesn't make sense in the current

ordinance to allow offices for others and not allow a trade association. No one could discern the rational basis to limit it to doctors, lawyers, accountants, etc., as opposed to other services. Consequently, pursuant to the recommendation of the Capitol Environs Commission, the applicant filed the text change which simply says a special permitted use would be for an office. In the event the text change is preferred, they have requested the special permit, which is simply an office building to house trade association functions.

Steward clarified with the applicant that they would be happy with approval of the text amendment and the special permit. The applicant concurred. NACO had not thought of the text amendment before and Fahleson agrees that it is appropriate as opposed to changing the zoning.

There was no testimony in opposition.

Public hearing was closed.

CHANGE OF ZONE NO. 3275

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

September 20, 2000

Duvall moved approval, seconded by Carlson.

Carlson supports this text change because it has gone through a number of channels and there has been notification and some discussion with the three neighborhoods. In addition, R-8 zoning is predominantly downtown and that neighborhood association has been involved and it has gone through Capitol Environs.

Motion for approval carried 9-0: Duvall, Hunter, Taylor, Schwinn, Steward, Newman, Krieser, Carlson and Bayer voting 'yes'.

CHANGE OF ZONE NO. 3259

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

September 20, 2000

Steward moved to deny, seconded by Schwinn and carried 9-0: Duvall, Hunter, Taylor, Schwinn, Steward, Newman, Krieser, Carlson and Bayer voting 'yes'.

SPECIAL PERMIT NO. 1871

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

September 20, 2000

Duvall moved approval, with conditions, seconded by Carlson and carried 9-0: Duvall, Hunter, Taylor, Schwinn, Steward, Newman, Krieser, Carlson and Bayer voting 'yes'.

Note: This is final action, unless appealed to the City Council by filing a letter of appeal with the City Clerk within 14 days of the action by the Planning Commission.

COMPREHENSIVE PLAN AMENDMENT NO. 94-58

PUBLIC WAY CORRIDORS

CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION: September 20, 2000

Members present: Duvall, Hunter, Taylor, Schwinn, Steward, Newman, Krieser, Carlson and Bayer.

Nicole Fleck-Tooze of Planning staff requested to continue public hearing on October 4, 2000, to provide further opportunity to meet with members of the development community who have expressed concerns.

The Commission met prior to this meeting where the staff provided an overview of the elements contained within the corridor and what composed of the 140' width, i.e. multiple uses within that corridor, the roadway functions that allowed for and the variables in terms of distance between sidewalk and curb or trail, etc. The staff discussed the possibility of other alternatives, but continues to bring forward the 140' concept. They also discussed the revision to the recommendation to have the area of application of these corridors apply to the Future Urban Service Limit versus the 3-mile jurisdictional area. The staff does have a meeting scheduled for September 25th with some of the members of the development community who have expressed concerns.

Bayer encouraged the Commissioners to get questions to the staff as soon as possible so that the Commission can take action on October 4th.

Carlson moved to defer, with continued public hearing and administrative action on 10/4/00, seconded by Krieser and carried 9-0: Duvall, Hunter, Taylor, Schwinn, Steward, Newman, Krieser, Carlson and Bayer voting 'yes'.

There was no further public testimony.

SPECIAL PERMIT NO. 1866
FOR A WIRELESS COMMUNICATIONS FACILITY
ON PROPERTY LOCATED AT NO. 48TH AND LEIGHTON AVENUE.
CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION: September 20, 2000

Members present: Duvall, Hunter, Taylor, Schwinn, Steward, Newman, Krieser, Carlson and Bayer.

Proponents

1. **Jill Bazzell of Qwest Wireless**, the applicant, requested another two-week deferral. They have not gathered all the information being requested by the staff.

Jennifer Dam of Planning staff advised the Commission that it has been determined that the waiver of landscaping is not needed so it will be readvertised for final action on October 4th.

Carlson moved to defer for two weeks, with continued public hearing and administrative action scheduled for October 4, 2000, seconded by Krieser and carried 9-0: Duvall, Hunter, Taylor, Schwinn, Steward, Newman, Krieser, Carlson and Bayer voting 'yes'.

CHANGE OF ZONE NO. 3274
FROM R-2 RESIDENTIAL TO R-5 RESIDENTIAL
ON PROPERTY GENERALLY LOCATED
AT SOUTH 46TH STREET AND PIONEERS BLVD.

This application was withdrawn on September 20, 2000.

SPECIAL PERMIT NO. 1867
TO BUILD A PARKING LOT
ON PROPERTY GENERALLY LOCATED
AT 1228/120 H STREET.

This application was withdrawn on September 20, 2000.

OTHER ITEMS NOT APPEARING ON THE AGENDA

Jennifer Dam of Planning staff appeared to advise that next Wednesday, September 27, 2000, at 6:00 p.m. is the special public hearing on the Comprehensive Plan Amendment for the Antelope Valley Project. She requested that the Commissioners submit any specific questions to the staff by Monday, September 25th, so that the staff can be prepared to respond at the public hearing.

Bayer asked about the timetable. Dam advised that the special hearing is September 27, 2000. It is anticipated that the Planning Commission would take action on October 4th. Then it could be before the City Council for public hearing at their night meeting on October 30, 2000.

There being no further business, the meeting was adjourned at 3:50 p.m.

Please note: These minutes will not be formally approved until the next regular meeting of the Planning Commission on October 4, 2000.